

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 42
HABEAS CORPUS AND INSTITUTIONAL LITIGATION PROCEDURES ACT

19-4201. SHORT TITLE. Sections [19-4201](#) through [19-4226](#), Idaho Code, shall be known and may be cited as the "Idaho Habeas Corpus and Institutional Litigation Procedures Act."

[19-4201, added 1999, ch. 376, sec. 2, p. 1027.]

19-4201A. DEFINITIONS. As used in this chapter:

(1) "Correctional facility" means a facility for the confinement of prisoners. Unless otherwise specifically provided, the term shall include a state, local or private correctional facility.

(2) "In-state prisoner" means a person who has been convicted of a crime in the state of Idaho and is either incarcerated in a correctional facility for that crime or is in custody for trial and sentencing.

(3) "Institution" or "state or county institution" means a place owned or operated by or under the control of the state or county in which a person other than a prisoner is restrained and with respect to which restraint the person may file a petition for a writ of habeas corpus under the provisions of this chapter.

(4) "Local correctional facility" means a facility for the confinement of prisoners operated by or under the control of a county or city. The term shall include any reference to "jail" or "county jail."

(5) "Out-of-state prisoner" means a person who has been convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and who is being housed in any state, local or private correctional facility in the state of Idaho, or who is being transported in any manner within or through the state of Idaho.

(6) "Prisoner" includes an in-state or out-of-state prisoner, unless otherwise specifically provided or unless the context clearly indicates otherwise.

(7) "Private correctional facility" means a correctional facility owned or operated in the state of Idaho by a private prison contractor.

(8) "Private prison contractor" means any person, organization, partnership, joint venture, corporation or other business entity engaged in the site selection, design, design/building, acquisition, construction, construction/management, financing, maintenance, leasing, leasing/purchasing, management or operation of private correctional facilities or any combination of these services.

(9) "State correctional facility" means a correctional facility owned or operated by or under the control of the state of Idaho.

[19-4201A, added 2000, ch. 271, sec. 1, p. 778.]

19-4202. JURISDICTION TO CONSIDER PETITIONS FOR WRIT OF HABEAS CORPUS. The following courts of this state shall have original jurisdiction to consider a petition for writ of habeas corpus, grant the writ and/or order relief under this chapter:

(1) The supreme court; or

(2) The district court of the county in which the person is detained.

[19-4202, added 1999, ch. 376, sec. 2, p. 1027.]

19-4203. WHO MAY PETITION FOR A WRIT OF HABEAS CORPUS. (1) Any person, not a prisoner as defined in section [19-4201A](#), Idaho Code, who believes he is unlawfully restrained of his liberty in this state may file a petition for writ of habeas corpus to request that the court inquire into the cause and/or legality of the restraint.

(2) An in-state prisoner, as defined in section [19-4201A](#), Idaho Code, or a person who is restrained of his liberty while involved in parole revocation proceedings, or while held on an agent or commission warrant in this state, may file a petition for writ of habeas corpus to request that a court inquire into state or federal constitutional questions concerning:

- (a) The conditions of his confinement;
- (b) Revocation of parole;
- (c) Miscalculation of his sentence;
- (d) Loss of good time credits;
- (e) A detainer lodged against him.

(3) An out-of-state prisoner, as defined in section [19-4201A](#), Idaho Code, may file a petition for writ of habeas corpus only to request that an Idaho court inquire into a state or federal constitutional question concerning the conditions of his confinement. Habeas corpus relief shall not be available for an out-of-state prisoner to challenge:

- (a) Any issue concerning the legality of his out-of-state conviction or sentence;
- (b) Any issue concerning the legality of the fact or duration of his confinement in this state;
- (c) Any issue concerning the legality of the contract or agreement or any terms thereof pursuant to which he is housed in this state;
- (d) Any issue concerning the grant, denial or revocation of parole for his out-of-state conviction and sentence;
- (e) Miscalculation of his out-of-state sentence;
- (f) Loss of out-of-state good time credits or lack of (failure to grant) good time credits under the laws of the state of Idaho;
- (g) A detainer lodged against him.

(4) Habeas corpus shall not be used as a substitute for, or in addition to, a direct appeal of a criminal conviction or proceedings under Idaho criminal rule 35 or the uniform post-conviction procedures act, [chapter 49, title 19](#), Idaho Code, and the statutes of limitations imposed therein.

(5) Habeas corpus shall not be used as a substitute for or in addition to proceedings available in child custody matters and proceedings under the Idaho domestic violence crime prevention act, [chapter 63, title 39](#), Idaho Code.

(6) Habeas corpus is an individual remedy only.

(7) For purposes of this chapter and any other civil challenges to conditions of confinement, the term "conditions of confinement" shall be defined as any civil proceeding with respect to a condition in any state or county institution, or state, local or private correctional facility, as those terms are defined in section [19-4201A](#), Idaho Code, arising under state or federal law pertaining to the conditions of confinement or the effects of actions by government officials or employees of a private prison contractor while employed at a private correctional facility in the state of Idaho on

the life of a person confined in a state or county institution, or a state, local or private correctional facility.

[19-4203, added 1999, ch. 376, sec. 2, p. 1027; am. 2000, ch. 271, sec. 2, p. 778.]

19-4204. APPLICATION FOR WRIT OF HABEAS CORPUS BY A PERSON NOT A PRISONER. (1) Application for a writ of habeas corpus by a person not a prisoner shall be made by filing a petition for writ of habeas corpus in the district court of the county in which the person is restrained.

(2) The petition must be verified by the oath or affirmation of the party applying for the writ and shall specify:

- (a) That the person is unlawfully restrained of his liberty;
- (b) The identity and address of the person restraining the subject of the petition;
- (c) The name and address of the place in which the person is restrained;
- (d) A description of the facts which make the restraint illegal; and
- (e) The theory of law upon which relief is sought, if known.

(3) Application under this section may be made by a guardian on behalf of a minor or by a guardian on behalf of an incapacitated person as defined in section [15-5-101](#), Idaho Code.

[19-4204, added 1999, ch. 376, sec. 2, p. 1028.]

19-4205. APPLICATION FOR WRIT OF HABEAS CORPUS BY A PRISONER. (1) Application for a writ of habeas corpus by a prisoner shall be made by filing a petition for a writ of habeas corpus in the district court of the county in which the prisoner claims his confinement or aspects of his confinement violate provisions of the state or federal constitutions.

(2) With respect to a petition filed by an in-state prisoner, the petition must be verified by the oath or affirmation of the prisoner applying and shall specify that the prisoner is alleging state or federal constitutional violations concerning:

- (a) The conditions of his confinement;
- (b) The revocation of his parole;
- (c) Miscalculation of his sentence;
- (d) Loss of good time credits; or
- (e) A detainer lodged against him.

(3) With respect to a petition filed by an out-of-state prisoner, the petition must be verified by the oath or affirmation of the prisoner applying and shall specify that the prisoner is alleging state or federal constitutional violations concerning the conditions of his confinement, as provided in section [19-4203](#)(3), Idaho Code.

(4) A petition filed by a prisoner under subsection (1), (2) or (3) of this section shall specify:

- (a) The identity and address of the person or officer whom the prisoner believes is responsible for the alleged state or federal constitutional violations, and shall name the persons identified individually as respondents;
- (b) The name, if any, and address of the place in which the prisoner is incarcerated;
- (c) The name and address of the place in which the prisoner claims the constitutional violation occurred;

(d) A short and plain statement of the facts underlying the alleged state or federal constitutional violation; and

(e) Whether the petitioner is an out-of-state prisoner.

(5) Neither the state of Idaho, any of its political subdivisions, or any of its agencies, nor any private correctional facility shall be named as respondents in a prisoner petition for writ of habeas corpus.

[19-4205, added 1999, ch. 376, sec. 2, p. 1028; am. 2000, ch. 271, sec. 3, p. 779.]

19-4206. PRISONERS REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES IN CONDITIONS OF CONFINEMENT CASES. (1) Unless a petitioner who is a prisoner establishes to the satisfaction of the court that he is in imminent danger of serious physical injury, no petition for writ of habeas corpus or any other civil action shall be brought by any person confined in a state or county institution, or in a state, local or private correctional facility, with respect to conditions of confinement until all available administrative remedies have been exhausted. If the institution, or state, local or private correctional facility does not have a system for administrative remedy, this requirement shall be waived.

(2) At the time of filing, the petitioner shall submit, together with the petition for writ of habeas corpus a true, correct and complete copy of any documentation which demonstrates that he has exhausted administrative remedies described in subsection (1) of this section.

(3) If at the time of filing the petition for writ of habeas corpus the petitioner fails to comply with this section, the court shall dismiss the petition with or without prejudice.

[19-4206, added 1999, ch. 376, sec. 2, p. 1029; am. 2000, ch. 271, sec. 4, p. 780.]

19-4207. APPLICATION FOR WRIT OF HABEAS CORPUS ON BEHALF OF ANOTHER. A petition for writ of habeas corpus may only be filed by a person described in section [19-4203](#), Idaho Code, or his attorney, except that a petition may be filed on behalf of an aggrieved person who is a minor, or on behalf of a person who is incapacitated as defined by section [15-5-101](#), Idaho Code, by the aggrieved person's legal guardian.

[19-4207, added 1999, ch. 376, sec. 2, p. 1029.]

19-4208. GENERAL PROCEDURES GOVERNING HABEAS CORPUS PROCEEDINGS. A habeas corpus proceeding is a civil action and is governed by the provisions of this chapter and the Idaho court rules to the extent that such rules are not inconsistent with this act.

[19-4208, added 1999, ch. 376, sec. 2, p. 1029.]

19-4209. PROCEDURES GOVERNING PRISONER HABEAS CORPUS PROCEEDINGS. (1) The court may dismiss with prejudice a petition for writ of habeas corpus under this section, in whole or in part, prior to service of the petition on the respondent, if the court finds:

(a) The petition is frivolous as defined in section [12-122](#), Idaho Code;

(b) The petition has been brought maliciously or solely to harass;

(c) The petition fails to state a claim of constitutional violation upon which relief can be granted;

(d) The alleged constitutional deprivation is de minimis in nature; or

(e) The relief sought is monetary damages or the return of property.

(2) If the court finds that the petition should not be dismissed, then:

(a) The court shall mail a copy of the petition and order of response to the respondent or the respondent's counsel, if known;

(b) A response must be filed within thirty (30) days from the date the respondent or the respondent's counsel is served with the petition and order for response. If the court finds that exigent circumstances exist which warrant an earlier response, the court shall set forth those circumstances and the allowed time for response; and

(c) If the court dismisses the petition in part, the court may specify which issues and/or allegations remain at issue for response.

(3) If the court orders a response to a petition for writ of habeas corpus under this section, the respondent may file any responsive motion or pleading allowed by Idaho rules of civil procedure.

(4) Upon the filing of a responsive motion or pleading, a prisoner may file a reply to the response or the court may order a reply to the response on its own motion. The court should consider any reply filed only to the extent it is relevant to the issues and allegations raised in the original petition for writ of habeas corpus.

(5) With respect to a petition filed by an in-state prisoner the court should not grant a writ of habeas corpus or order an evidentiary hearing under this section unless, after reviewing the petition for writ of habeas corpus, the response and the reply, if any, the court finds that the prisoner's state or federal constitutional rights may have been violated relative to:

(a) Conditions of confinement;

(b) Revocation of parole;

(c) Miscalculation of his sentence;

(d) Loss of good time credits; or

(e) A detainer lodged against him.

If, after review under this subsection, the court finds that the allegations do not state a state or federal constitutional claim, the court may dismiss the petition without a hearing.

(6) With respect to a petition filed by an out-of-state prisoner, the court should not grant a writ of habeas corpus or order an evidentiary hearing under this section unless, after reviewing the petition for writ of habeas corpus, the response and the reply, if any, the court finds that the out-of-state prisoner's state or federal constitutional rights may have been violated relative to the out-of-state prisoner's conditions of confinement. If, after review under this subsection, the court finds that the allegations do not state a state or federal constitutional claim, the court may dismiss the petition without a hearing.

(7) If the court issues a writ of habeas corpus and sets the matter for evidentiary hearing, the following shall apply:

(a) The hearing shall be set as expeditiously as possible and may be at a place convenient for the court and the parties, including the institution or the state, local or private correctional facility where the prisoner is confined;

(b) The burden of proof during an evidentiary hearing pursuant to a petition for writ of habeas corpus lies with the prisoner; and

(c) As soon as possible after the conclusion of the hearing, the court shall enter its findings of fact and conclusions of law, and either dismiss the petition in part or in its entirety, or grant injunctive relief consistent with this act.

[19-4209, added 1999, ch. 376, sec. 2, p. 1029; am. 2000, ch. 271, sec. 5, p. 781.]

19-4210. DISCOVERY IN HABEAS CORPUS PROCEEDINGS. (1) Discovery shall not ordinarily be permitted in habeas corpus cases.

(2) No discovery shall be permitted if the issues raised by the petition, the response or reply are wholly legal in nature.

(3) If factual issues are raised by the pleadings, the court may, upon motion, grant leave for discovery in accordance with Idaho rules of civil procedure.

(a) The party must file a motion for leave to conduct discovery, attaching a copy of the discovery sought.

(b) If the court finds that discovery is necessary to protect or defend a substantive state or federal constitutional right at issue, it shall enter an order tailored to allow discovery for that limited purpose.

[19-4210, added 1999, ch. 376, sec. 2, p. 1031.]

19-4211. ISSUANCE OF WRIT OF HABEAS CORPUS. (1) Any court authorized under section [19-4202](#), Idaho Code, may grant a writ of habeas corpus pursuant to a petition filed by, or, pursuant to section [19-4207](#), Idaho Code, on behalf of a person not a prisoner if it finds that the restraint of the person's liberty is illegal.

(2) Any court authorized under section [19-4202](#), Idaho Code, may grant a writ of habeas corpus and order a hearing pursuant to a petition filed by a prisoner, or, pursuant to section [19-4207](#), Idaho Code, on behalf of a prisoner when:

(a) The court has considered the factual allegations contained in the petition together with any responsive pleading filed by the respondent, and a reply filed by the prisoner, if any;

(b) The court finds that the petitioner is likely to prevail on the merits of his state or federal constitutional challenge;

(c) The court finds that the petitioner will suffer irreparable injury if some relief is not granted;

(d) The court finds that the balance of potential harm to the petitioner substantially outweighs any legitimate governmental interest; and

(e) The court finds that equity favors granting relief to the petitioner.

(3) Any order granting the writ should issue without delay and a hearing should be scheduled. The court may provide a statement of the issues to be addressed, and whether evidence will be accepted.

(4) If a court issues an order granting the writ and setting the matter for hearing, the court may set the hearing at the state, local or private correctional facility or other appropriate place.

[19-4211, added 1999, ch. 376, sec. 2, p. 1031; am. 2000, ch. 271, sec. 6, p. 782.]

19-4212. INJUNCTIVE RELIEF AVAILABLE TO A PERSON NOT A PRISONER. If a court finds that a person not a prisoner is being illegally restrained, the court may fashion appropriate injunctive relief to cure the illegality, including release.

[19-4212, added 1999, ch. 376, sec. 2, p. 1031.]

19-4213. RELIEF AVAILABLE FOR CONSTITUTIONAL VIOLATIONS DURING THE COURSE OF REVOCATION OF PAROLE. (1) If a court finds that an in-state prisoner's constitutional rights have been violated during the course of revocation of his parole, the court may, upon specific findings of fact and conclusions of law, enter an order directing that the parole revocation proceedings be reconvened. The order shall identify the constitutional violation which occurred and direct that the violation be cured.

(2) The Idaho commission for pardons and parole has the exclusive authority to order release of an in-state prisoner on parole pursuant to sections [20-210](#) and [20-223](#), Idaho Code.

[19-4213, added 1999, ch. 376, sec. 2, p. 1031; am. 2000, ch. 271, sec. 7, p. 783.]

19-4214. RELIEF AVAILABLE FOR MISCALCULATION OF SENTENCE. (1) If, upon findings of fact and conclusions of law, a court finds that an in-state prisoner's sentence has been miscalculated, the court may order the sentence to be recalculated consistent with the court's findings and conclusions.

(2) The court may order the prisoner released under this section only if the prisoner would be entitled to release due to expiration of his sentence correctly calculated.

[19-4214, added 1999, ch. 376, sec. 2, p. 1032; am. 2000, ch. 271, sec. 8, p. 783.]

19-4215. RELIEF AVAILABLE FOR LOSS OF GOOD TIME CREDITS. (1) If the court finds that an in-state prisoner has lost good time credits without constitutionally sufficient due process, the court may order a rehearing by the correctional facility authority.

(2) Any court order requiring rehearing shall specify:

(a) How due process was constitutionally insufficient and direct that the insufficiency be cured; and

(b) Provide that the officials of the correctional facility shall have not less than thirty (30) days in which to convene the rehearing.

(3) The correctional facility authority shall have the responsibility for the recalculation and restoration of good time credits. If good time credits are restored to the petitioner as a result of the rehearing, and restoration of good time credits entitles the petitioner to release, he shall be so released.

[19-4215, added 1999, ch. 376, sec. 2, p. 1032; am. 2000, ch. 271, sec. 9, p. 783.]

19-4216. RELIEF AVAILABLE FOR DETAINERS. (1) An in-state prisoner may petition for writ of habeas corpus to challenge the legality of a detainer which has been lodged against him by another state under the interstate agreement on detainers, [chapter 50, title 19](#), Idaho Code.

(2) The court may set a hearing on a petition for writ of habeas corpus to inquire into factual issues involving the legality of the detainer or the legality of delivery of the prisoner to the prosecuting state under the detainer. However, if the petition involves legal issues only, the court shall decide the matter without hearing consistent with section [19-4209](#), Idaho Code.

[19-4216, added 1999, ch. 376, sec. 2, p. 1032; am. 2000, ch. 271, sec. 10, p. 784.]

19-4217. INJUNCTIVE RELIEF AVAILABLE TO PRISONERS AND OTHER INSTITUTIONALIZED PERSONS IN CONDITIONS OF CONFINEMENT CASES. (1) If the court finds that a prisoner's or other institutionalized person's constitutional rights have been violated involving conditions of confinement, the court may order injunctive relief consistent with and subject to the limitations set forth in this chapter.

(2) If the court concludes that injunctive relief is necessary to cure unconstitutional conditions of confinement, the court shall enter an order subject to the following limitations:

- (a) Any order for injunctive relief shall be accompanied by specific findings of fact and conclusions of law;
- (b) Injunctive relief shall be narrowly drawn and extend no further than necessary to correct the violation of the constitutional right;
- (c) Injunctive relief must be the least intrusive means necessary to correct the constitutional violation;
- (d) The court shall give substantial weight to any adverse impact on public safety;
- (e) The court shall give substantial deference to the discretion of administrators of the institution or the state, local or private correctional facility;
- (f) The administrator of the institution, or of the state, local or private correctional facility shall be given all reasonable opportunities to correct state or federal constitutional errors made in the internal operations of the institution and shall be charged with the task of devising constitutionally sound modifications to their operations.

[19-4217, added 1999, ch. 376, sec. 2, p. 1032; am. 2000, ch. 271, sec. 11, p. 784.]

19-4218. TERMINATION OF INJUNCTIVE RELIEF ORDER OR DECREE IN CONDITIONS OF CONFINEMENT CASES. In any civil action with respect to conditions of confinement in which prospective relief is ordered or obtained pursuant to consent decree, the relief order or decree shall be terminated upon the motion of any party or intervenor:

- (1) Two (2) years after the date the court granted or approved the prospective relief;
- (2) One (1) year after the date the court has entered an order or decree denying termination of prospective relief under this section; or
- (3) In the case of an order issued on or before the date of enactment of this act, one (1) year after such date of enactment.

[19-4218, added 1999, ch. 376, sec. 2, p. 1033.]

19-4219. IMMEDIATE TERMINATION OF ORDER OR DECREE FOR PROSPECTIVE RELIEF IN CONDITIONS OF CONFINEMENT CASES. (1) In any civil action with respect to conditions of confinement, the administrator of the institution, or of the state, local or private correctional facility, or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of an express finding by the court that the relief:

- (a) Is narrowly drawn;
- (b) Extends no further than necessary to correct the violation of the constitutional right; and
- (c) Is the least intrusive means necessary to correct the violation of the constitutional right.

(2) Prospective relief shall not terminate if the court makes written findings based on the record that the prospective relief:

- (a) Remains necessary to correct a current or ongoing violation of the constitutional right;
- (b) Extends no further than necessary to correct the violation of the constitutional right;
- (c) Is narrowly drawn; and
- (d) Is the least intrusive means to correct the violation.

(3) Nothing in this section shall prevent the administrator of the institution, or of the state, local or private correctional facility, or intervenor from seeking modification or termination before the relief is terminable under subsection (1) or (2) of this section to the extent that modification or termination would otherwise be legally permissible.

[19-4219, added 1999, ch. 376, sec. 2, p. 1033; am. 2000, ch. 271, sec. 12, p. 784.]

19-4220. SETTLEMENTS AND CONSENT DECREES IN CONDITIONS OF CONFINEMENT CASES. (1) In any civil action with respect to conditions of confinement, the court shall not enter or approve a settlement or consent decree unless it complies with the limitations on relief set forth in section [19-4217](#), Idaho Code.

(2) This section, together with sections [19-4217](#), [19-4218](#) and [19-4219](#), Idaho Code, applies to all settlements or consent decrees in effect at the time of passage of this act. Any settlement or consent decree entered into before enactment of this act shall not be construed as a waiver of the application of this section by any party to the settlement or consent decree, and may be terminated consistent with sections [19-4218](#) and [19-4219](#), Idaho Code.

[19-4220, added 1999, ch. 376, sec. 2, p. 1034.]

19-4221. SUCCESSIVE CLAIMS. In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding if the prisoner has, on two (2) or more prior occasions, while incarcerated or detained in any state, local or private correctional facility, brought an action or appeal in a court of this state that was dismissed on any ground set forth in section [19-4209](#)(1)(a) through (d), Idaho Code, unless:

- (1) The prisoner first obtains leave from the district court having jurisdiction over the case; or
- (2) The prisoner's action or petition is submitted for filing by an attorney licensed to practice law in the state of Idaho.

[19-4221, added 1999, ch. 376, sec. 2, p. 1034; am. 2000, ch. 271, sec. 13, p. 785.]

19-4222. PRIOR SHOWING OF PHYSICAL INJURY OR MENTAL ILLNESS REQUIRED. No civil action may be brought by a prisoner confined in a state, local or private correctional facility for mental or emotional injury suffered while in custody without a prior showing of either:

- (1) Physical injury; or
- (2) Diagnosed severe and disabling mental illness.

[19-4222, added 1999, ch. 376, sec. 2, p. 1034; am. 2000, ch. 271, sec. 14, p. 785.]

19-4223. RIGHT OF ACCESS TO COURT NOT EXPANDED. Nothing in this chapter shall be construed to expand the right of access to courts for institutionalized persons under federal or state law.

[19-4223, added 1999, ch. 376, sec. 2, p. 1034.]

19-4224. EXCLUSIVE REMEDY. This chapter sets forth the exclusive procedures and remedies in habeas corpus actions.

[19-4224, added 1999, ch. 376, sec. 2, p. 1034.]

19-4225. LIBERTY INTEREST NOT CREATED. Nothing in this chapter shall be construed to create a liberty interest.

[19-4225, added 1999, ch. 376, sec. 2, p. 1034.]

19-4226. SEVERABILITY. The provisions of this act are declared to be severable and if any provision of this act or the application of a provision to any person or circumstance is declared invalid for any reason, the declaration shall not affect the validity of the remaining portions of this act.

[19-4226, added 1999, ch. 376, sec. 2, p. 1034.]